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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/598,687	05/29/2007	Jos Kobussen	P07033USD	8984
34082	7590	06/28/2010		
ZARLEY LAW FIRM P.L.C. CAPITAL SQUARE 400 LOCUST, SUITE 200 DES MOINES, IA 50309-2350			EXAMINER LONG, LUANA ZHANG	
			ART UNIT	PAPER NUMBER
			1782	
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			06/28/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/598,687

Applicant(s)

KOBUSSEN ET AL.

Examiner

LUANA Z. LONG

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 14-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

DETAILED ACTION

1. Applicants' amendment to the claims in the response filed 4/23/2010 is acknowledged and entered. Claims 1-17 are currently pending in the application. The previous 35 U.S.C. §112 second paragraph rejections of claims 5, 9-10 are withdrawn in light of applicants' amendments to claims 5 and 8.

Election/Restrictions

2. This application contains claims 14-17 drawn to an invention nonelected without traverse. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kobussen et al. [US patent 6245369] (hereinafter Kobussen) in view of Sanderson et al. [US patent 5783237] (hereinafter Sanderson) and Ricklefs et al. [US patent 5632153] (hereinafter Ricklefs), for the reasons described in the Office Action mailed 11/24/2009.

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5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kobussen in view of Sanderson and Ricklefs, in further view of Erskine [US 3,444,078], for the reasons described in the Office Action mailed 11/24/2009.

6. Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kobussen in view of Sanderson and Ricklefs, in further view of Keil et al. [US 3,073,702] (hereinafter Keil), for the reasons described in the Office Action mailed 11/24/2009.

7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kobussen in view of Sanderson, Ricklefs, and Keil, in further view of Hignett et al. [US 4,536,313] (hereinafter Hignett), for the reasons described in the Office Action mailed 11/24/2009.

8. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kobussen in view of Sanderson, Ricklefs, and Keil, in further view of Barber et al. [US 2003/0183092] (hereinafter Barber), for the reasons described in the Office Action mailed 11/24/2009.

9. Claims 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kobussen in view of Sanderson and Ricklefs, in further

view of Riordan [US 4,094,237], for the reasons described in the Office

Action mailed 11/24/2009.

Response to Arguments

10. Applicants' arguments filed 4/23/2010 have been fully considered but they are not persuasive.

11. In response to arguments on pages 6-7, that neither Kobussen, Sanderson, nor Ricklefs alone or in combination discloses each and every element of claim 1, these arguments are not persuasive. As explained in the Office Action mailed 11/24/2009, Kobussen discloses all the steps of applicants' independent claim 1, except for the step of reconditioning the brine. Sanderson is a reference used to show that it is known in the food processing industry to recondition used brine by forced evaporation of water out of the brine. Ricklefs is a reference used to show that the problem of contaminated brine is well-known in the sausage processing industry and that Ricklefs' solution is to clean and reuse the brine. The motivation for modifying the process of Kobussen by Sanderson so that it includes a step of reconditioning brine by forced evaporation, is to achieve a more efficient recycling and reuse of the brine.

12. Applicants argue on pages 7-8 that Sanderson does not disclose the limitation of reconditioning brine by forced evaporation of water, but instead discloses a large volume of salty whey being desalinated and filtered, introduced into an evaporator and the re-salinated to create a saturated salt solution. However, Sanderson clearly states that their process is a process for the

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recovery and reuse of salt solutions in food processing (col. 1, lines 5-6), and merely uses the application of the manufacture of cheese curd as an embodiment of the invention (col. 1, lines 6-8). Sanderson discloses a prior art problem of wasting salt solutions in food processing because they are contaminated with food residues during processing (col. 1, lines 12-17). This is the same problem disclosed by applicants (pages 1-2 of the Specification) for the salt solution used for processing of co-extruded food products. Sanderson's solution is to reuse the salt solution contained in salty whey emanating from the salting treatment of cheese curd, and recycle this salt solution and utilize it in the salting of the cheese curd (col. 1, lines 17-35), where one of the process steps comprise evaporating water out of the salt solution (col. 2, lines 3-4). This is similar to the solution that applicants described in page 2, paragraphs 2-4 of the Specification of reconditioning of the salt solution by evaporation of water.

13. Applicants point out on page 11 that Sanderson requires a fully saturated salt solution, however, it is unclear how this point applies since claim 1 simply recites "providing an aqueous salt solution" and "reconditioning the collected aqueous salt solution." Claim 1 does not limit the salt solution to be unsaturated.

14. Applicants also argue on page 11 that no salt is added in applicants' invention, and that Sanderson discloses adding salt after the step of evaporation. This argument is not persuasive because applicants' claim 1 states a process comprising (including) reconditioning the collected aqueous salt solution such that it comprises (includes) forced evaporation of water out of the aqueous salt solution. Applicants' claim 1 does not *exclude* any steps of adding additional salt

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to the aqueous salt solution, therefore Sanderson reads on the step of reconditioning the salt solution of claim 1.

15. In regards to arguments on pages 11-12 that there is no incentive to combine Kobussen with the Sanderson disclosure since both relate to different process conditions, different demand in process control, and that it is not clear why those skilled in the art would selectively only take the evaporation step of Sanderson and not other steps like the injection of water; these arguments are not persuasive. As disclosed above, the motivation for adding the reconditioning step of Sanderson, comprising evaporation of water, to the process of Kobussen is to achieve a more efficient recycling and reuse of the brine of Kobussen, since Sanderson also discloses reusing brine. A further motivation for adding the reconditioning step of Sanderson to the process of Kobussen is that the evaporation of water increases the salt concentration in the salt solution (Sanderson, col. 2, lines 47-50), which is an advantage in that the salt solution keeps its potency. It is noted that Sanderson's preferred embodiment is particular to the process of manufacturing cheese curd and that the water injection step noted by the applicants is part of the membrane filtration step to remove whey solids from the salty whey solution (col. 2, lines 40-47), which is particular to cheese curd manufacturing. Contrary to applicants' arguments, one having ordinary skill in the art at the time of the invention would recognize adding other reconditioning steps of Sanderson, such as a membrane filtration step, to the process of Kobussen, since these reconditioning steps cleans out the salt solution for more effective reuse. However, these additional reconditioning steps

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are not recited in applicants' claim 1, so therefore not stated in the rejection in the Office Action mailed 11/24/2009. Therefore, applicants' argument of only selectively combining the evaporation step of Sanderson to the process of Kobussen is not persuasive.

16. Applicants argue on page 8 that Ricklefs does not disclose reconditioning the brine by forced evaporation. The Examiner agrees with the applicants since Ricklefs is not used to show this step (see rejection of claim 1 in the Office Action mailed 11/24/2009); instead, Ricklefs is a reference used to show that the problem of contaminated brine is one well-known in the sausage processing industry and that Ricklefs' solution is to clean and reuse the brine, thereby providing further motivation for adding Sanderson's step of reconditioning brine by forced evaporation of water to the sausage processing method of Kobussen. Ricklefs provides evidence of the known problems of using brine (such as waste, increased cost due to waste) (col. 1, lines 33-56) in the meat processing industry, which is the same problems disclosed in applicants' Specification (waste flow resulting from contaminated brine and the high cost resulting from this waste) (pages 1-2).

17. Applicants also argue on page 12 that Ricklefs' disclosure is directed to a different process utilizing methods unlike those of Kobussen, Sanderson, and the Applicant, making Ricklefs reference non-analogous art. Examiner agrees with applicants' observation that Ricklefs discloses a different process. However, this **does not** indicate that the reference Ricklefs is non-analogous art. Ricklefs discloses a different process of using brine in the meat processing industry

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(chilling food products), instead of a process of dehydrating co-extruded foods, as disclosed by Kobussen. However, both the processes of chilling and dehydrating use a brine solution that is put in contact with food and then collected and reused. Both processes have problems of having food particles contaminate the brine, and Ricklefs' solution is to clean the brine, which is the same general solution disclosed by applicants (reconditioning of brine). Therefore, the reference Ricklefs is analogous art to Kobussen, Sanderson, and Applicants' invention.

18. Applicants also argue on pages 8-10 that the combination of Kobussen, Sanderson, and Ricklefs would not be obvious without using the Applicants' Specification as a blueprint because there is no reason or motivation to combine the references, these arguments are not persuasive. As explained in the Office Action mailed 11/24/2009 and reiterated above, the motivation to include a step of reconditioning brine by forced evaporation of Sanderson to the sausage dehydrating process of Kobussen, is to have an efficient recycling and reuse of the brine solution. Sanderson discloses that it is an advantage to reuse the salt solution contained in salty whey (col. 1, lines 32-36). Sanderson also discloses that the evaporation of water increases the salt concentration in the salt solution (col. 2, lines 47-50), which is an advantage in that the salt solution keeps its potency. Furthermore, adding a step of reconditioning the brine has the advantage of being able to continuously reuse the brine solution without having to waste the brine by discharging the brine to the environment (Ricklefs, col. 1, lines 48-56). Therefore, all these reasons would prompt one having ordinary skill

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in the art at the time of the invention to add a step of reconditioning the brine comprising forced evaporation of water of Sanderson to the sausage processing method of Kobussen, especially in view of Ricklefs' disclosure of cleaning and reusing brine in the meat processing industry.

19. Therefore, the rejection of record is maintained.

Conclusion

20. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

21. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **LUANA Z. LONG** whose telephone number is 571-270-1152. The examiner can normally be reached on 8:30 AM - 5:00 PM.

23. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax

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phone number for the organization where this application or proceeding is assigned is 571-273-8300.

24. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. Z. L./

Examiner, Art Unit 1782

/Rena L. Dye/

Supervisory Patent Examiner, Art Unit 1782